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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,944	05/27/2005	Roland Kneer	0814.73128	8320

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EXAMINER	
WOLLSCHLAGER, JEFFREY MICHAEL	
ART UNIT	PAPER NUMBER
1791	

MAIL DATE	DELIVERY MODE
12/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/536,944	KNEER, ROLAND	
	Examiner	Art Unit	
	Jeff Wollschlager	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 September 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 13, 2007 has been entered.

Response to Amendment

Applicant's amendment to the claims, specification and drawings filed September 13, 2007 has been entered. Claim 1 is currently amended. Claim 11 is new. Claims 1-11 are pending and under examination.

Claim Objections

Claims 5 and 8 are objected to because of the following informalities: In claim 5, the recitation "said tool" would be more consistently rendered, --said saw tool -- in accord with the currently amended claims. Claim 8 recites, "separated". The limitation would be more properly rendered –separating --. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kneer (U.S. 6,276,558) in view of any of Pollak (U.S. 6,865,813) or Arnegger (U.S. 5,569,257) or Nitz et al. (US 5,265,340).

Regarding claim 1, Kneer teaches a method of producing a receptacle comprising forming at least one wall opening in the outer wall of a receptacle as described in the preamble with various types of sharp cutting tools (col. 2, lines 44-col. 3, lines 8) including rotating cutting tools, a knife with an inclined flank such as a roof-like shape (i.e. a tooth), a rotating tubular knife and a hollow knife (col. 3, lines 48-col. 4, line 20 ; Figure 1A (5); Figure 2A (11)). In practicing the process, Kneer teaches the cutting tool impinges the inner bag without damaging it (col. 2, lines 52-67). Kneer further teaches the invention is not limited to the knives described (col. 4, line 21) as long as the inner bag is not gripped by the cutting tool thereby causing damage (col. 4, lines 33-37). Further, Kneer teaches the cutting may occur in a direction substantially perpendicular to the wall (col. 5, lines 40-45). Kneer does not disclose an oscillating cutting tool.

However, each of Pollak (col. 3, lines 8-24), Arnegger (col. 1, lines 18; col. 3, lines 62-65) and Nitz et al. (col. 3, line 55-col. 4, line 65; Figure 17) individually teach oscillating cutting tools for making small holes or cuts in materials.

Therefore it would have been *prima facie* obvious to one having ordinary skill in the art at the time of the claimed invention to have modified the method employed by Kneer and to have substituted the cutting tool disclosed by Kneer with an oscillating cutting tool as disclosed by the cited secondary references. The motivation to do is provided by the secondary references: Pollak teaches that oscillating cutting tools are inexpensive tools that have good stability in operation (col. 1, lines 30-40). Arnegger teaches that an oscillating tool improves the cut characteristics (Abstract) while making very fine separating or parting cuts (col. 3, lines 62-65).

Nitz et al. teach the oscillating tool reduces dust formation, provides precise cuts and openings because the tool does not pull or push the workpiece and that it may be used to cut plastic materials (col. 4, line 7-62).

Further, the examiner notes that, as implied by Kneer (col. 4, line 21), one having ordinary skill would have had a reasonable expectation of success of employing other cutting tools in order to accomplish the method disclosed by Kneer without damaging the inner bag. Such would have been achieved with routine experimentation. The examiner further notes that the secondary references are analogous because they are directed to the same problem solving area of creating a controlled cut or hole.

As to claim 2, Pollak discloses oscillations of 5,000 to 30,000 oscillations/minute (col. 3, lines 8-14) and Arnegger et al. disclose 20,000 to 60,000 strokes/minute (col. 3, lines 62-65).

As to claims 3, 5 and 8, Kneer discloses the knife has inclined flanks (5) and Pollak discloses a plurality of teeth (30) or diamond tips may be employed (col. 3, lines 30-33; col. 4; lines 38-50).

As to claims 4, 6 and 7, Kneer teaches a circular section can be cut away (col. 3, lines 10-20) and further discloses the cutting may be radial or linear (col. 4, line 18-20). Arnegger teaches that an oscillating tool improves the cut characteristics (Abstract) while making very fine separating or parting cuts (col. 3, lines 62-65). Nitz et al. teach precise cuts and openings may be made (col. 4, line 7-62).

Claims 1, 3, 4, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kneer (U.S. 6,276,558) in view of either of Menzel et al. (US 4,254,075) or Kim (US 5,676,497).

Regarding claims 1 and 10, Kneer teaches a method of producing a receptacle comprising forming at least one wall opening in the outer wall of a receptacle as described in the

preamble with various types of sharp cutting tools (col. 2, lines 44-col. 3, lines 8) including rotating cutting tools, a knife with an inclined flank such as a roof-like shape (i.e. a tooth), a rotating tubular knife and a hollow knife (col. 3, lines 48-col. 4, line 20 ; Figure 1A (5); Figure 2A (11)). In practicing the process, Kneer teaches the cutting tool impinges the inner bag without damaging it (col. 2, lines 52-67). Kneer further teaches the invention is not limited to the knives described (col. 4, line 21) as long as the inner bag is not gripped by the cutting tool thereby causing damage (col. 4, lines 33-37). Further, Kneer teaches the cutting may occur in a direction substantially perpendicular to the wall (col. 5, lines 40-45). Kneer does not disclose an oscillating cutting too such as a rod with a rough face.

However, each of Menzel et al. (Figures 1-3; col. 1, line 59-col. 2, line 5; col. 3, line 45-col. 4, line 5) and Kim (Abstract; Figures 2 and 4; col. 1, line 8-17; col. 5, line 4-14) individually teach oscillating cutting tools for making small holes or cuts in materials wherein the tool is a saw having a rod with a rough face.

Therefore it would have been *prima facie* obvious to one having ordinary skill in the art at the time of the claimed invention to have modified the method employed by Kneer and to have substituted the cutting tool disclosed by Kneer with an oscillating cutting tool such as a rod with a rough face as disclosed by either of Menzel et al. or Kim, for the purpose of providing a versatile sawing device suitable for cutting plastic (Kim: Abstract; col. 5, lines 4-15) and to provide a cutting method that cuts plastic without leaving burrs (Menzel: col. 1, lines 5-12).

As to claim 3, Kneer discloses the knife has inclined flanks (5) and Kim discloses teeth (Figure 2).

As to claims 4 and 7, Kneer teaches a circular section can be cut away (col. 3, lines 10-20) and further discloses the cutting may be radial or linear (col. 4, line 18-20).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kneer (U.S. 6,276,558) in view of any of Pollak (U.S. 6,865,813) or Arnegger (U.S. 5,569,257) or Nitz et al. (US 5,265,340), as applied to claims 1-8 above, and further in view of Ryd et al. (US 5,087,261).

As to claim 9, the combination as set forth above teaches the method of claim 1. The combination does not teach the saw tool is a wire with a rough surface. However, Ryd et al. teach that oscillating saws with toothed blades (28, 29) and wires with rough surfaces (40, 41) are art recognized equivalent methods of cutting.

Therefore it would have been *prima facie* obvious to one having ordinary skill in the art at the time of the claimed invention to have employed wires with a rough surface as the cutting means in the combination set forth in claim 1 since it has been held that employment of art recognized equivalents is *prima facie* obvious absent new or unexpected results.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kneer (U.S. 6,276,558) in view of Nomoto et al. (US 6,266,943) and in view of any of Pollak (U.S. 6,865,813) or Arnegger (U.S. 5,569,257) or Nitz et al. (US 5,265,340).

Regarding claim 1, Kneer teaches a method of producing a receptacle comprising forming at least one wall opening in the outer wall of a receptacle as described in the preamble with various types of sharp cutting tools (col. 2, lines 44-col. 3, lines 8) including rotating cutting tools, a knife with an inclined flank such as a roof-like shape (i.e. a tooth), a rotating tubular knife and a hollow knife (col. 3, lines 48-col. 4, line 20 ; Figure 1A (5); Figure 2A (11)). In practicing the process, Kneer teaches the cutting tool impinges the inner bag without damaging it (col. 2, lines 52-67). Kneer further teaches the invention is not limited to the knives described (col. 4, line 21) as long as the inner bag is not gripped by the cutting tool thereby causing damage (col. 4, lines 33-37). Further, Kneer teaches the cutting may occur in a direction

substantially perpendicular to the wall (col. 5, lines 40-45). Kneer does not disclose an oscillating cutting tool or cutting through the wall of the reduced neck portion.

However, each of Pollak (col. 3, lines 8-24), Arnegger (col. 1, lines 18; col. 3, lines 62-65) and Nitz et al. (col. 3, line 55-col. 4, line 65; Figure 17) individually teach oscillating cutting tools for making small holes or cuts in materials and Nomoto et al. analogously disclose cutting through the wall of a reduced neck portion (Abstract; Figure 2).

Therefore it would have been *prima facie* obvious to one having ordinary skill in the art at the time of the claimed invention to have modified the method employed by Kneer and to have substituted the cutting tool disclosed by Kneer with an oscillating cutting tool as disclosed by the cited secondary references. The motivation to do is provided by the secondary references: Pollak teaches that oscillating cutting tools are inexpensive tools that have good stability in operation (col. 1, lines 30-40). Arnegger teaches that an oscillating tool improves the cut characteristics (Abstract) while making very fine separating or parting cuts (col. 3, lines 62-65). Nitz et al. teach the oscillating tool reduces dust formation, provides precise cuts and openings because the tool does not pull or push the workpiece and that it may be used to cut plastic materials (col. 4, line 7-62). Additionally, it would have been *prima facie* obvious to one having ordinary skill in the art to have formed the hole in a known location, such as the reduced neck portion suggested by Nomoto et al., for the purpose of providing a hole in a location suitable for various container and pump applications as set forth by Nomoto et al.

Further, the examiner notes that, as implied by Kneer (col. 4, line 21), one having ordinary skill would have had a reasonable expectation of success of employing other cutting tools in order to accomplish the method disclosed by Kneer without damaging the inner bag. Such would have been achieved with routine experimentation. The examiner further notes that

the secondary references are analogous because they are directed to the same problem solving area of creating a controlled cut or hole.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kneer (U.S. 6,276,558) in view Nomoto et al. (US 6,266,943) and in view of either of Menzel et al. (US 4,254,075) or Kim (US 5,676,497).

Regarding claims 1 and 10, Kneer teaches a method of producing a receptacle comprising forming at least one wall opening in the outer wall of a receptacle as described in the preamble with various types of sharp cutting tools (col. 2, lines 44-col. 3, lines 8) including rotating cutting tools, a knife with an inclined flank such as a roof-like shape (i.e. a tooth), a rotating tubular knife and a hollow knife (col. 3, lines 48-col. 4, line 20 ; Figure 1A (5); Figure 2A (11)). In practicing the process, Kneer teaches the cutting tool impinges the inner bag without damaging it (col. 2, lines 52-67). Kneer further teaches the invention is not limited to the knives described (col. 4, line 21) as long as the inner bag is not gripped by the cutting tool thereby causing damage (col. 4, lines 33-37). Further, Kneer teaches the cutting may occur in a direction substantially perpendicular to the wall (col. 5, lines 40-45). Kneer does not disclose an oscillating cutting too such as a rod with a rough face or cutting through the wall of the reduced neck portion.

However, each of Menzel et al. (Figures 1-3; col. 1, line 59-col. 2, line 5; col. 3, line 45-col. 4, line 5) and Kim (Abstract; Figures 2 and 4; col. 1, line 8-17; col. 5, line 4-14) individually teach oscillating cutting tools for making small holes or cuts in materials wherein the tool is a saw having a rod with a rough face and Nomoto et al. analogously disclose cutting through the wall of a reduced neck portion (Abstract; Figure 2).

Therefore it would have been *prima facie* obvious to one having ordinary skill in the art at the time of the claimed invention to have modified the method employed by Kneer and to have substituted the cutting tool disclosed by Kneer with an oscillating cutting tool such as a rod with a rough face as disclosed by either of Menzel et al. or Kim, for the purpose of providing a versatile sawing device suitable for cutting plastic (Kim: Abstract; col. 5, lines 4-15) and to provide a cutting method that cuts plastic without leaving burrs (Menzel: col. 1, lines 5-12). Additionally, it would have been *prima facie* obvious to one having ordinary skill in the art to have formed the hole in a known location, such as the reduced neck portion suggested by Nomoto et al., for the purpose of providing a hole in a location suitable for various container and pump applications as set forth by Nomoto et al.

Response to Arguments

Applicant's arguments filed September 13, 2007 have been fully considered, but are moot, with regard to new claim 11, in view of the new grounds of rejection. Regarding the amendment to claim 1, the examiner submits that Kneer also discloses cutting in a direction substantially perpendicular to the wall (Figure 2A (14); col. 5, lines 40-45) as set forth above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Wollschlager whose telephone number is 571-272-8937. The examiner can normally be reached on Monday - Thursday 7:00 - 4:45, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JW

Jeff Wollschlager
Examiner
Art Unit 1791

December 6, 2007

CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER